
(2002) 10 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 31683-M of 1998

R.G. Srivastava

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 16-10-2002

Acts Referred:

Essential Commodities Act, 1955 — Section 7

Citation : (2002) 5 CriminalCC 176 : (2003) 2 RCR(Criminal) 54

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : Dinesh Goel, for the Appellant; R.S. Cheema, AAG, Punjab, for the Respondent

Final Decision : Allowed

Judgement

Swatanter Kumar, J.—We have heard learned counsel for the parties at some length.

2. By this judgment, I propose to dispose of two Criminal petition being Criminal Misc. Nos.31683 and 31685-M of 1998. The common prayer made in these two petition by the same person is for quashing of complaint. Annexure P/1 to the petition filed, u/s 7 of the Essential Commodities Act read with Clause 19 of the Fertilizer Control Order pending in the Court of Special Judge, Muktsar. The principal contention raised on behalf of the petitioner is that he could not be prosecuted as he was not nominated under Clause 24 of the Control Order. According to the petitioner, he was nominated by the Company under Clause 24 vide letter dated 4th March, 1997. The sample for analysis was collected by the authorised Officer on 6th November, 1995 and 6th July, 1995 respectively. This appears to be the correct position from the record before me. In the complaint, there is no averment that the petitioner was being prosecuted as he was responsible for the conduct and business of the respondent company when the sample was collected (i.e. accused No. 1 M/s H.S.S. Fertilizer Ltd.)

3. Learned counsel for the State argued that the name of the petitioner as nominee of the company was pending consideration with the State Government and as such the accused-petitioner cannot take any advantage or protection under Clause 24 of the Ordinance and the accused cannot take any advantage thereof.

4. This argument raised on behalf of the State is self destructive. It is an admitted case and in fact in reply to petition filed on behalf of the State, letters of the company have been annexed as Annexure R/1 and R/2 respectively, wherein the company has recommended the name of the petitioner as nominee in compliance to the statutory provision as stipulated under Clause 24 of the Ordinance. This was never confirmed or notified by the State and as such the State cannot take any advantage of delay on its own part. The Company had performed its obligation under Clause 24 of the Ordinance by submitted the name of the nominee. The present petitioner, thus, cannot be held to be responsible for the conduct of the business of the company at best only with effect from 4th March, 1997 for fastening on the petitioner prior thereto. The State was required to make specific pleadings. In the complaint filed before the learned Magistrate, it has not been averred that the present petitioner was responsible for the conduct of business of the Company and the sample was taken in his presence. In absence of these material averments in the complaint, the prosecution cannot be permitted to lead evidence contrary to its complaint. Furthermore, non-confirmation of the petitioner by the government in compliance of Clause 24 of the Ordinance would further substantiate the plea of the petitioner.

5. For the reasons aforestated, I allow these tow petitioners and quash the complaint, Annexure P/1 appended with the respective petitions as far as accused namely R.G. Srivastava is concerned. However, complaint against the company and other accused shall proceed expeditiously in accordance with law. Interim orders are hereby vacated.